IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No.146 of 2001

1. Sharfuddin Jamaluddin Shaikh

2. Narendra Tolaram Verma @ Mane

3. Riyajuddin Jamaluddin Shaikh

4. Mohammed Sayyed Dinmohammed Kadri. ..... Appellants
(Original Accused Nos.1 to 4)

Versus

The State of Maharashtra. ..... Respondent

Mr. S. R. Pasbola for Appellant Nos.1 to 3 (Original Accused Nos.1 to 3).

Mr. Majeed Memon, Senior Advocate with Mr. S. R. Pasbola for Appellant No. 4 (Original Accused No. 4).

Mr. A. R. Patil, Additional Public Prosecutor for Respondent-State.

CORAM: DR. S. RADHAKRISHNAN &
SMT. ROSHAN DALVI, JJ.

Date of reserving the judgment : 30.8.2007

Date of pronouncing the judgment : 12.9.2007

JUDGMENT: (Per Smt. Roshan Dalvi, J.)

1. The Appellants have challenged the judgment of the Additional Sessions Judge, Greater Bombay, in Sessions Case No.810 of 1998 under which they have been convicted for committing the

offences punishable under Section 302 read with Section 34 of Indian Penal Code and sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.1,000/- and in default, to suffer rigorous imprisonment for 2 months.

2. The Accused have been acquitted for the offences under Section 37 read with Section 135 of the Bombay Police Act. There is no Appeal filed by the State from the order of acquittal. The Complainant is the brother of the deceased one Mohammed Rafiq. The deceased lived with his father, mother, brother and sister. It is the prosecution case that the deceased one Mohammed Rafiq, the brother of the Complainant, left his house on 17.4.1998 at about 9.15 p.m. to attend the marriage ceremony at Goregaon. As soon as he left the house, the Complainant and his family members heard shouts of a quarrel between the deceased and some others. They came out of the house. They found the deceased surrounded by the four Accused. They were threatening the deceased. Accused Nos.1, 3 and 4 had swords in their hands and Accused No.2 had an axe. Two persons, examined as P.W.Nos.2 and 5, were trying to persuade the Accused not to quarrel. Accused No.1 inflicted a blow by means of a sword on the head of the deceased. Consequently, the deceased had a bleeding injury. The Complainant himself saw this after he came out of the house and proceeded towards his

brother who was surrounded by the Accused. When the first blow was given the other witnesses moved back. His mother rushed towards the deceased. She was pushed back. The Complainant proceeded towards his brother. The Accused came towards the Complainant. Hence the Complainant retreated. After the first blow given by Accused No.1 on the head of the deceased, all the Accused started giving repeated blows by their swords and an axe, upon the deceased, respectively. The Accused left the place brandishing their weapons.

3. Havaldar from Meghwadi Police Station, came on the spot. Mohammed Rafiq was shifted to Cooper hospital. The doctor declared him dead.

4. The mother of the Complainant and the deceased also suffered some injuries on her finger, arm and back. The injury on the finger was a bleeding injury by a sword, made by Accused No.1 while he pushed the mother when she first rushed towards the deceased. The mother was treated in the hospital after the deceased was declared dead and taken away. The Complainant then lodged his complaint.

5. A telephonic message was sent from Cooper hospital to Meghwadi Police Station. PSI Patole, who was on the station house duty,

made the relevant station entry. He recorded the complaint.

6. Thereafter, the inquest panchanama of the dead body of the deceased in Cooper hospital was drawn. His clothes were attached. Spot panchanama was drawn. Some broken bangle pieces, earth smeared with blood and plain earth samples were attached. Statements of P.W.2 and 5, who were eye witnesses, as well as one Vasant Kashid were recorded on the next day. Accused Nos.1 and 2 were arrested. The axe and clothes of Accused No.2 came to be recovered under a discovery panchanama on 18.4.1998. The sword and clothes of Accused No.1 came to be recovered under discovery panchanama on 19.4.1998. Accused Nos.3 and 4 were arrested on 19.4.1998. Their swords and clothes were recovered on that day. The statement of the mother came to be recorded on 21.4.1998. The statement of another witness, examined as P.W.6, came to be recorded thereafter. The blood samples of the Accused were collected on 24.4.1998. They were sent for grouping to the Chemical Analyser along with the articles and clothes recovered at the scene on 5.5.1998, by a forwarding letter of that date. A charge-sheet came to be filed thereupon.

7. The Accused were essentially charged with having committed murder of the deceased Mohammed Rafiq on 17.4.1998 at about 9.15 p.m. All the Accused have been convicted of the said offence,

from which conviction this Appeal is filed.

8. The Appeal rests necessarily and essentially upon four eye witness accounts. Two of the eye witnesses are the brother and the mother of the deceased. Two other eye witnesses are independent eye witnesses who lived in the neighbourhood and who were stated to have been standing close to the house of the deceased where the deceased came to be assaulted and murdered.

9. Mr. Pasbola on behalf of Appellant Nos. 1, 2 and 3 argued essentially on the ground that the eye witness accounts are neither believable, nor trustworthy as the Complainant, who is the star witness of the prosecution and who is the brother of the deceased, has falsely implicated the Accused. This was because the deceased had molested the sister of Accused No.1, who was later murdered and in whose murder case P.W.1, the brother of the deceased, is one of the Accused. He further argued that Accused Nos. 3 and 4 are also distant relatives of Accused No.1 and hence, falsely implicated. He contended that the testimony of P.W. 1 as also his mother, P.W. 3, is that of interested witnesses and consequently, must be rejected. He further contended that the recoveries, which are sought to be made at the instance of each of these Accused, are not made as per the procedure set out under Section 27 of the Indian Evidence Act, 1872, and cannot be accepted as corroborated

pieces of evidence.

10. Mr. Majeed Memon, Senior Advocate, argued on behalf of Accused No. 4 stating that, his client had also been falsely implicated due to the rivalry between the deceased and Accused No.1 on account of the sister of Accused No.1, who was known to Accused No. 4, being a distant relative. Mr. Memon further argued that if the eye witness account of the witnesses creates any doubt, they are required to be independently corroborated by medical evidence and the evidence of recovery of weapons or clothes which have clearly not been done in this case. He then drew our attention to certain omissions and contradictions in the evidence of the eye witnesses which shall be dealt with presently. He also argued that the recovery stated to have been made at the instance of one Accused is actually shown against the articles taken on record as that of the other Accused. This aspect shall be adverted to presently. He further contended that the medical evidence did not support the eye witness account and the prosecution had failed to specify and correlate each of the injuries to their respective weapons and Accused persons. He has drawn our attention to a part of the evidence of the doctor which shows the main injury on the deceased having been caused by a blunt weapon. He further contended that the weapons taken in evidence would not meet such description. He also argued that the

witnesses were simplicitor shown the weapons in Court which they identified, a procedure which was erroneous. They have not described the weapons before they were shown to them witnesses in their depositions.

11. Four eye witness accounts have essentially to be collated and considered to understand the prosecution case and test its veracity. It is elementary that if an offence is proved by direct oral evidence of eye witnesses, no further corroboration is essential.

12. Nevertheless, the prosecution has sought to corroborate the eye witness account by the injuries suffered by the deceased himself as reflected in the inquest panchanama and the postmortem report, as also by the recovery of weapons and clothes of the Accused persons made soon after the incident.

13. All the Accused were known to each of the eye witnesses. They have been arrested on the very next day and the day after. The arrest of the first two Accused was within hours of the offence having been committed. The offence was committed in the late hours of the night after 9 p.m. The deceased died soon after. The complaint was recorded shortly after. Some of the Accused were arrested within a few hours of the incident and the other Accused on the following day.

14. Similarly, the recoveries at the instance of three of the Accused have been made on the very next day and day thereafter. The last recovery was made within 5 days of the offence.

15. It is the case of the prosecution that motive for the murder was revenge. Explaining this, the prosecution stated that Accused No.1 sought to take revenge due to his enmity with the deceased on account of the fact that the deceased was alleged to have molested the sister of Accused No.1. The said sister later expired. It was an unnatural death. The Complainant had been made an Accused in the case of her murder. The prosecution further stated that the other three Accused were his associates and accomplices and committed the offence for the same motive.

16. It is the case of the Accused that they have been falsely implicated because the Complainant was an Accused in the murder case of the sister of Accused No.1.

17. It must be appreciated that whatever motive/false implication that has been alleged is necessarily and only between the deceased/complainant on the one hand and Accused No.1 on the other. However, as will be seen presently, the overt acts of all the Accused have been deposed and set out by each of the four eye

witnesses. It must also be appreciated that Accused Nos. 3 and 4 are stated to be close relatives of Accused No. 1. The defence on their behalf is that, therefore, they are also falsely implicated. However, Accused No. 2 who also had a specific role assigned and who was carrying an axe is a complete stranger/outsider. He is not, in any way, related to Accused No. 1. Nevertheless, the defence of false implication has been made even by him without showing the reason for any such implication.

18. The eye witness account of P.W.1, the brother of the deceased and P.W.3, the mother of the deceased are urged to have been tainted on the ground of their enmity due to the case against the deceased. However, no enmity was shown or suggested upon P.W. 2 and 5, the other two eye witnesses.

19. The witness accounts must be first seen. P.W.1 has deposed about the fact that the deceased was at home with other family members on that fateful day – 17.4.1998. He left the house only to attend a marriage ceremony at Goregaon. Within some time they heard shouts. The Complainant and his mother went to the place from where shouts were coming which is in front of Pawala chawl, which is close to their residence, the deceased and his brother were surrounded by the four Accused. A quarrel was going on. There was an exchange of words. The Accused accused the deceased of

reporting them to the Police (i.e. - being an informant). The deceased was denying that fact. P.W's. 2 and 5 were trying to pacify the Accused. Accused Nos. 1, 3 and 4 were holding swords in their hands. Accused No. 2 was holding an axe in his hand. Accused No. 1 inflicted a blow on the head of the Complainant's brother by means of a sword. The other three Accused also started assaulting his brother by means of an axe and swords, respectively. P.W's. 2 and 5, who were trying to pacify them, left the place because of fear. The Complainant's mother went to save his brother. Accused No. 4 pushed his mother with the sword. Then the Accused persons came towards him with their swords. He moved backwards. Once again his mother went ahead to save his brother. Accused No.2 pushed her and she fell down. His mother received a blow from the sword of Accused No.1 on her arm and finger. All four Accused, using their swords and an axe respectively, inflicted blows on the Complainant's brother mercilessly. His brother fell down. All the Accused left the place, brandishing their weapons in the air.

20. P.W. 2 has deposed that he knew the deceased since his childhood. On 17.4.1998 at 9 p.m. he was near a *Chabil* (an arrangement made for drinking water for the public) at some distance from his house. He saw a quarrel in front of the house of P.W. 5. The quarrel was between the Accused and the deceased. Other

persons had gathered. P.W. 5 and one Abubakkar were amongst those gathered persons. Accused Nos.1, 3 and 4 were holding swords in their hands. Accused No.2 held an axe in his hand. He went to pacify them in the quarrel because they were familiar to him. The deceased was saying that the Accused should prove that he was an informant. Accused No. 1 inflicted a blow on the head of the deceased by his sword. Thereafter all four Accused inflicted blows on his person by their swords and an axe, respectively. To save Rafiq, his mother and brother came running. His mother was pushed. Accused Nos. 1 and 4 pointed swords towards the brother and hence, the brother moved back. Thereafter all four Accused assaulted the deceased mercilessly. The deceased fell on the ground in a pool of blood. Thereafter all four Accused left the place, moving their weapons in the air and abusing the people in the lane. He then went to his house.

21. P.W. 3, mother of the deceased, has deposed that on 17.4.1998, the deceased left the house at 9 p.m. He had to attend a marriage at Goregaon. Shortly after he left, she heard the shout of quarrel. She heard the voice of her son. She was frightened. She and her son (the complainant) started proceeding. They ran towards the shouts. A crowd had gathered. She saw the deceased surrounded by the four Accused. Accused Nos. 1, 3 and 4 were holding swords

in their hands. Accused No.2 was holding an axe in his hand. P.W. 2 and 5 were persuading the Accused persons to leave him. The Accused persons reside in their lane. Accused No. 1 inflicted the blow by means of sword on the head of the deceased. She tried to save him. Accused No. 2 pushed her. Her other son (the complainant) was trying to save the deceased. Accused No.1 pointed the sword towards her son. He moved back because of fear. All four assaulted the deceased. Once again she went to save him. She sustained injury on her right arm and fingers with sword of Accused No. 1. Accused No. 4 pushed her forcibly. All four Accused assaulted the deceased mercilessly. The deceased was in a pool of blood. He had fallen to the ground. All four Accused left the place, moving their weapons in the air, apprehending the locality people.

22. P.W. 5 has deposed that on 17.4.1998 at 9 p.m. he was standing outside his house near the *Chabil*. He saw the four Accused having surrounded the deceased. They were quarreling. Accused No. 1 was accusing the deceased of being a Police informant. Other persons had gathered there. P.W. 2 and he were also there. They went to pacify the Accused. Accused No. 1 inflicted a blow by means of his sword on the head of the deceased. Others also inflicted blows on him. Accused Nos. 1, 3 and 4 inflicted blows by

means of their swords. Accused No.2 inflicted by means of an axe. The mother and brother of the deceased came outside. The mother was pushed. Sword was pointed at the brother of the deceased. He then moved back. All four Accused inflicted blows on the person of the deceased mercilessly. The deceased was lying in a pool of blood. All the assailants left the place, moving weapons in the air and abusing the people of that locality. P.W. 5 then went home.

23. The consolidated eye witness account presents just one minor contradiction in the name of the weapon used by Accused No.1. There is a slight contradiction, though entirely immaterial on whether Accused No.1 had a sword or a *sura*. Both are equally deadly weapons. Both would cause similar injuries. The mention of a *sura* appears to be inadvertently made at only one place.

24. The following columnar statement shows the collation and corroboration of the eye witnesses' accounts.

EYE WITNESS COMPARISON CHART

PW1 – Abdul Karim Abdulrub Shaikh Brother **Page No. - 159**		**PW2 – Abdul Mudalihi Shaikh (Abdul Mutalib)** Onlooker **Page No. – 192**		**PW3 – Amatunnisa Abdulrub** Mother **Page No. – 207**		**PW5 – Liyakat Badruddin** Owner of house outside where incident took place **Page No. - 248**	
⇒	At 8.30pm on 17.4.98 PW1, his brother, mother and Mousina were with the deceased Rafiq	⇒	On 17.4.98 at about 9.10pm he saw a quarrel in front of Liyakats house.	⇒	On 17.4.98 Rafiq left at 9.00pm	⇒	At 9.00pm on 17.4.98 he was outside his house. Shortly after he saw all four accused.
⇒	Shortly after Rafiq left for the wedding. Moments later they heard shouts.			⇒	Shortly after Rafiq had left, she heard the sound of a quarrel.		
		⇒	There was a quarrel between all four accused and Rafiq.				
⇒	Along with his mother they went towards the house from where they heard the shouts.			⇒	Along with her son she proceeded towards the origin of the sound.		
⇒	Heard the Accused having accused Rafiq of squealing them out to the police.	⇒	Accused No. 1 accused Rafiq of squealing on them to the police.			⇒	Accused No. 1 had been accusing Rafiq of being an informant.
⇒	Rafiq denied the accusation.						
⇒	Rafiq was surrounded by all four accused.			⇒	All four accused had surrounded Rafiq.	⇒	All four accused had surrounded Rafiq.
		⇒	Due to the quarrel a crowd had gathered.	⇒	A crowd had gathered.	⇒	A crowd had gathered. Stated that along with Abdul Mutalib, they were part of the crowd gathered.
⇒	All four accused were quarrelling with Rafiq and words had been exchanged.						
⇒	Accused Nos. 1, 3 and 4 were holding swords. Accused No. 2 was holding an axe.	⇒	Accused Nos. 1, 3 and 4 were holding swords. Accused No. 2 was holding an axe.	⇒	Accused Nos. 1,3 and 4 were holding swords. Accused No. 2 was holding an axe.	⇒	Accused Nos. 1, 3 and 4 inflicted blows on Rafiq using their swords. Accused No. 2 used his axe.
⇒	No weapon with Rafiq.			⇒	No weapon with Rafiq.		
⇒	Abdul Mutalib and Liyakat Badruddin were trying to pacify the accused.	⇒	Went towards the Accused to pacify them.	⇒	Abdul Mutalib and Liyakat Badruddin were trying to persuade the accused to relent.	⇒	Along with Abdul Mutalib, he tried to pacify the Accused.
⇒	Using his sword, Accused No. 1 inflicted a blow on the head of Rafiq.	⇒	Using his sword, Accused No. 1 inflicted a blow on the head of Rafiq.	⇒	Using his sword, Accused No. 1 hit Rafiq on the head.	⇒	Using his sword, Accused No. 1 inflicted a blow on the head of Rafiq.

EYE WITNESS COMPARISON CHART (contd.)

	PW1 – Abdul Karim Abdulrub Shaikh Brother **Page No. - 159**		**PW2 – Abdul Mudalihi Shaikh (Abdul Mutalib)** Onlooker **Page No. – 192**		**PW3 – Amatunnisa Abdulrub** Mother **Page No. – 207**		**PW5 – Liyakat Badruddin** Owner of house outside where incident took place **Page No. - 248**
				⇒	The Accused persons reside in their lane.		
⇒	Other three accused inflicted blows on Rafiq with swords and an axe respectively.	⇒	Thereafter, all four accused inflicted blows on Rafiq with swords and an axe respectively.	⇒	All four accused started assaulting Rafiq.	⇒	Blows were inflicted mercilessly on Rafiq.
⇒	Abdul Mutalib and Liyakat Badruddin left the scene due to fear.						
⇒	PW3 made an effort to save Rafiq.	⇒	PW3 and PW1 rushed towards Rafiq to save him.	⇒	Thereafter, she tried to save Rafiq. PW1 also made an effort to save Rafiq.		
⇒	PW3 was pushed to the ground by Accused No. 2.	⇒	PW3 was pushed.	⇒	Accused No. 2 pushed her.	⇒	PW3 (mother) was pushed.
⇒	Accused No. 4 pushed him (PW1) with his sword.						
⇒	The other Accused had started advancing towards him, because of which he moved back.	⇒	Accused Nos. 1 and 4 pointed their swords towards PW1. On seeing this PW1 moved back.	⇒	PW1 stepped back in fear because Accused No. 1 had his sword pointed at him.	⇒	PW1 moved back when swords were pointed at him.
⇒	All four accused inflicted blows on Rafiq, who subsequently fell to the ground.	⇒	Thereafter, all four accused assaulted Rafiq mercilessly.	⇒	Thereafter, all four accused assaulted Rafiq mercilessly.		
				⇒	She once again made an effort to save Rafiq.		
				⇒	Using his sword, Accused No. 1 injured her on her right hand arm and finger.		
				⇒	Accused No. 4 pushed her forcibly after her second attempt at trying to save Rafiq.		
⇒	Thereafter, all four accused left brandishing their weapons in the air.	⇒	Thereafter, all four accused left brandishing their weapons in the air whilst abusing local residents.	⇒	Thereafter, all four accused left brandishing their weapons in the air, while apprehending locality people.	⇒	Thereafter, all four accused left the place waiving their weapons in the air whilst abusing the local residents.
						⇒	He then went home.

25. The collation of evidence, as above, shows that the versions given by the brother and mother of the deceased as also the two neighbours or strangers, in all material particulars, are identical. The above witnesses have withstood the cross-examination with regard to the incident. Each of the aspects mentioned above have not been part of any omissions or contradictions.

26. The case, therefore, necessarily rests on direct cogent convincing, trustworthy and reliable evidence. Each witness has corroborated the story of the others. Each witness has deposed what he witnessed from his angle.

27. It might be interesting to note that whereas the mother and the brother had deposed that they also heard the incident which took place close to their residence soon after the deceased had left the house; the onlookers, who were strangers, have deposed about the incident from the time they saw the four Accused along with the deceased in a quarrel. Each of them have deposed about the nature of the quarrel, how the deceased was surrounded, how the crowd gathered, which weapons each of the Accused bore, what they as well as the others did upon the initiation of the fight, how the respective weapons were used and who made attempts to approach the Accused in the fight and what happened pursuant to such approach. All four eye witnesses have specifically deposed about

the initial single fatal blow on the head accurately. They have all been unable to depose about the details of each of the other blows suffered by the deceased. All ended the eye witness account with the culmination of the fight and the Accused brandishing/waiving their weapons in the air and leaving the scene.

28. The above statement specifically shows two aspects deposed only by the relatives of the deceased. The fact of Rafiq having denied the accusations made against him and the fact that he carried no weapons. Absence of these two statements in the evidence of the two other independent witnesses does not vary the incident. The fact that Rafiq had no weapon is seen by its absence in the evidence itself.

29. What is important is one omission brought out in the evidence of PW1. The eye witness account has shown that the mother twice approached the fight in a bid to save her son. She was pushed twice initially by Accused No. 2 and later by Accused No. 4. P.W. 3 had sustained injury on her right hand finger and arm. That was a minor injury. Only she could have felt it. Pertinently so, none of the other witnesses has deposed about this fact.

30. She was treated for her injury by the Doctor-P.W.10 well after the initial treatment was given to the deceased and after his death as

well as after P.W. 1 had lodged the FIR. The certificate of the Doctor - P.W. 10, Exh.34, shows her medical examination at 11.54 p.m. on 17.4.1998. This minor aspect, therefore, stands out in the evidence. Having known of the fact of his mother's injury, P.W. 1 deposed about it for the first time in Court – the FIR bears no reference to his mother's injury as he had no knowledge of it. At that time his attention was entirely on the incident of his brother's murder. Technically, therefore, though that fact is an omission, it does not whittle down his eye evidence account. It, in fact, shows that though it was true that the mother was slightly injured upon her intervening in the fight, it could not have been mentioned by him to the Police Officer as a part of the incident.

31. The eye witness account necessarily shows a single fatal blow on the head of the deceased followed by several fatal as well as non-fatal blows by all the Accused with their respective weapons on all parts of his body. It would, therefore, be material to consider the medical evidence to see whether it corroborates the eye witness account. P.W. 9 is the Doctor who conducted the postmortem examination. He has set out as many as 20 external injuries on the deceased which forms part of the postmortem report. The first injury is a contused lacerated wound on the frontal side, which is shown to be about 6 inches in length, semicircular in shape, bone deep and

has a bone fracture underneath it. This injury was caused by Accused No.1 as per the eye witness account. Accused No.1 wielded a sword. The shape of the injury corresponds with the shape of the weapon. It is one of the 5 fatal injuries as deposed by the doctor. The doctor has deposed about 3 internal injuries on the head of deceased. There have been subcutaneous hemorrhages, rupture of total scalp muscles, corresponding fracture of the skull at the right and left temporal frontal bone and brain hemorrhage.

32. Injury No. 2 is on the right frontal region above the right eyelid which is about 1 & ½ inches long. That has also been stated as a fatal injury.

33. Injury No. 7 is a deep incised injury under the right upper part of the chest, which are about 4 inches in length and 2 inches in shape.

34. Injury No. 8 is another incised stab wound on the left chest causing a rib fracture.

35. Injury No. 20 is an incised stab wound at the peretorial right scapular region, which is about 4 inches in length. Aside from this, there are 14 other non-fatal injuries on the mouth, chin, cheek, nostrils, arm, shoulder, chest, ankle, sheen, etc.

36. The Doctor opined that the death was unnatural and was caused by multiple hemorrhages. His evidence shows that these injuries were sufficient to cause death and were possible by sharp edged weapons like the weapons before the Court.

37. The cross-examination of the doctor shows that injury No. 1 could have been caused by a hard and blunt object such as a bamboo or rod. The precise description of the injuries in the postmortem report, however, shows that it is consistent with precisely a sword. The doctor has further deposed in his cross-examination that injury Nos. 1, 2, 7, 8 and 20 are on fatal parts and hence they are fatal injuries. The doctor has suggested that the stab wounds are caused by a weapon having sharp edges on both sides. He has shown a number of stab injuries in this case. The act of stabbing is consistent with the eye witness account.

38. Reading of the four witness accounts along with the various injuries shows that each of the witnesses' statements have been fully corroborated by medical evidence.

39. Such cogent direct evidence of as many as four witnesses, two of whom are the relatives of the deceased and two of whom are outsiders is, therefore, to be appreciated. It is trite that though much ado is made about the fact that the relatives of the deceased are

interested witnesses, it has so often been held that there is no reason for the relatives of the deceased to implicate a person unconnected with the crime and lay off the true offender, that a defence of false implication is completely worthless. That argument does not hold good for even a stranger who would have no reason to falsely implicate someone. Considering the defence of false implication, therefore, the evidence of the strangers, which completely corroborates the evidence of the relatives, assumes importance.

40. It would be worthwhile to see how the Apex Court has considered several cases of eye witness accounts corroborated by medical evidence without the need for anything further.

41. The latest case on the subject is of **Ramjee Rai & Ors. vs. State of Bihar 2006 Criminal Law Journal 4630**. That was a case of murder of the deceased in a boat. The deceased was thrown overboard. The brother of the deceased, who also apprehended attack, swam to safety upon seeing the deceased being attacked. Three other witnesses saw the incident from different directions. The eye witness account was given by four witnesses – P.W's. 1, 2, 3 and 5. Aside from the brother, the other eye witnesses consisted of a man sitting on a *Machan*, who deposed about the accused persons having assaulted the deceased and also about the

informant, the brother of the deceased escaping from the clutches of the accused. The other eye witness was in his maize field at the time of the occurrence. He corroborated the statements of two other witnesses, who were also eye witnesses. Yet another eye witness testified about the assault and the fact that he heard shouts of the deceased and as the shouts stopped, he realized that the deceased was no more. This case was much like the present case. The eye witness account of a relative of the deceased was corroborated by strangers in all material particulars. In that case, the dead body, which was recovered from the river, was later identified, though several parts were eaten by fish. It was nevertheless identified because of certain peculiar marks. The body had three cut wounds. The Apex Court considered this evidence enough to maintain the conviction for murder.

42. In the case of **Pohlu vs. State of Haryana (2005) 10 SCC 196**, it was held that it was not necessary for the prosecution to multiply the witnesses, but the intrinsic worth of the testimony of the witnesses examined by the prosecution had to be assessed by the Court. Even in the above case, the correlation of each of the injuries to their respective weapons and Accused persons was not made. It was observed as follows:-

> *"It was well nigh impossible for the first informant to pinpoint the exact overt acts committed by each of the accused*

persons individually."

Consequently, the evidence about the factum of infliction of blows was accepted upon three cut wounds being visible from the body of the deceased recovered from the river. In this case, the factum of many injuries by all the accused persons with their respective weapons is seen by the fact that the deceased had as many as 20 injuries all over his body.

43. In the case of **Ramji Singh & Anr. vs. State of Bihar AIR 2001 SC 3853** the daughter of the deceased ran out of the house and saw the Accused causing injuries to the deceased. She did not specify the injuries caused by each of the Accused but named all the Accused and stated that all of them caused injuries. Similar evidence was adduced by the wife of the deceased who was at home at the relevant time and saw the incident taking place just near her house. She was held to be a natural witness having received injuries in the same occurrence. A doctor examined by the prosecution corroborated her injuries (as has been done in this case also from the evidence of P.W. 9). The nephew of the deceased, a boy aged 12 years, who also gave full account of the occurrence, was held to be natural witness. Another witness who was an outsider also supported the evidence of the three relatives. Marshalling of the evidence revealed that they were natural

witnesses who deposed truthfully. It was held that they had no reasons to implicate the accused falsely leaving out the real culprits. Based upon such eye witness account, the conviction was maintained.

44. In the case of **Kovvuri Surya Bhaskara Reddy vs. Goluguri Adireddy & Ors. AIR 1998 SC 1570,** one out of the six accused persons, who came armed with different weapons, hacked the deceased with a knife on the head followed by other blows by the other accused. Eye witness account of the three witnesses P.W's. 2, 3 and 4, who held their ground in the cross-examination, was corroborated by the surgeon who deposed about the injuries. The conviction was held maintainable. This case is on all fours the facts of that case.

45. In the case of **Solanki Chimanbhai Ukabhai vs. State of Gujarat (1983) 2 SCC 174**, the eye witness accounts were considered along with the medical evidence. The eye witnesses in that case were the widow, the granddaughter of the deceased and the neighbour. The evidence showed that three eye witnesses were all possible and natural witnesses. They were present at the place of the occurrence. Their depositions coupled with the medical evidence, was held enough to sustain the conviction.

46. There were two injuries being one incised wound and the other stab injury. The injuries were shown to be caused by two different weapons in the cross-examination. However, it was not elicited in the cross-examination that one weapon could not have caused both the injuries. It was observed that two different weapons might have caused two different injuries was not equivalent to saying that one weapon could not have caused both the injuries. In this case, the weapons used were swords and an axe. The multiple injuries caused as such, could have been caused by either of the weapons as per the deposition of the Doctor.

47. In the case of **State of Andhra Pradesh vs. Rayavarapu Punnayya & Anr. (1976) 4 SCC 382** at 385, the injuries found on the deceased were cumulatively sufficient to cause death in the ordinary course of nature and they were held sufficient for culpability.

48. It may be mentioned that the prosecution need prove nothing further in a case of clear and cogent oral evidence corroborated by independent medical evidence as in this case.

49. Yet the prosecution has sought to corroborate their case by recovery of weapons at the instance of each of the accused. Four panch witnesses have been examined to this end. P.W's. 7, 8, 11

and 12 are panchas for recovery of the weapons and clothes of Accused Nos.1, 2, 3 and 4 respectively. Each of the panch witnesses has proved their panchanamas. They have deposed about how they were taken to the place from where the weapons and the clothes were recovered from the respective Accused. They have stood their ground in the cross-examination.

50. It has been very strenuously urged on behalf of all the Accused that none of the recoveries can be considered by the Court upon certain specific grounds against each of the recoveries. P.W. 7, who has proved the panchanama, Exhibit-25, and identified the sword, Article 2, the pant, Article 5 and the shirt, Article 6, which came to be recovered from Accused No. 1, is stated to be a cousin of the deceased and hence, not an independent witness to the recovery. The articles have been recovered from the roof of a hut. They are stated to have been sealed thereafter. The room of the hut is shown to have been locked in his cross-examination. A ladder was found in the hut. It led to the roof. Only the Accused climbed up the roof and brought the articles down. It has been contended on behalf of the Accused, though incorrectly, that there was no evidence that the hut was locked. That evidence finds it place in paragraph 5 of the cross-examination of P.W. 7. The accused is, therefore, seen to have exclusive access to the place of recovery. However, the

precise place in the hut, where the articles were found, was the roof. It is common knowledge that huts in Mumbai are exceedingly small places of residence and a ladder put in the hut leading to the roof, itself shows the kind and size of the property. The cross-examination does not show whether any other person could have gone to the roof along with the Accused. The panch as well as the I.O. had gone to the hut which was locked and opened by the Accused. Nobody had come there at that time as per the evidence in the cross-examination. The mere fact that the Accused climbed up the ladder and pulled down the articles does not show that the articles were not recovered in the presence of the panchas. Hence, the argument on behalf of the Accused that it was a recovery from a place, which was accessible to all and hence, becomes unreliable, must be rejected. The articles recovered under the panchanama produced by P.W.7 being a yellow shirt and a white pant from the roof of the hut are the articles identified by P.W.1 and described in the last paragraph of his examination-in-chief as a dust colour pant and yellow shirt.

51. P.W. 11 has proved the panchanama, Exhibit-37. He has produced the axe, shirt and the pant of Accused No. 2 at his instance. He is stated to be the brother of P.W. 5 and hence, not an independent witness. This recovery is made from a public toilet. The articles are

stated to have been kept under a *shahabadi* stone. It is argued on behalf of the Accused that, acceptable recovery cannot be made from an open place. The meaning of an open place is a relative concept. A place, which is accessible to all and which can be easily seen by all, would be an open place. Articles kept under a stone in the corner of a public toilet and are not likely to be seen or handled by lay public by displacing the stone. Consequently, the ruling in the case of **Abdul Sattar vs. Union Territory, Chandigarh AIR 1986 SC 1438 = 1986 Cri. L.J. 1072** would not apply. It is argued that a public toilet was opposite the Police Chowky and no Accused could have had an opportunity of keeping his articles in such a place as it is frequented by the Police. However, that reason cannot displace a recovery made and the evidence that has withstood the test of cross-examination.

52. P.W.8, Panch, has proved the panchanama, Exhibit-27. It shows the sword, shirt and pant recovered at the instance of Accused No.3. The place of recovery was a stall where the sister of Accused No.3 lived. This recovery was also made from the roof of the hut. The Accused pulled out a white polythene bag from the roof. It contained three articles, which have been described by the panch. The articles are stated to have been sealed. It is argued that cross-examination of the witnesses shows that the Panch and the I.O.

were standing in the lane when the Accused entered the house. The Inspector and the Accused went inside the house and returned with the bag. The Panch, who lived in the same locality where each of the Accused lived, had seen the Accused climbing the roof. They are expected to live in the same standard. Access to the roof in both huts would be fairly similar. The hut was in the lane itself. Hence, if the Panch and the Police stood in the lane, the hut would not be far away. There is nothing in the cross-examination to show or suggest any distance from the place where the Panch stood and/or the position of the roof. It has been argued on behalf of the Accused that the Articles, which are stated to have been recovered at the instance of Accused No.3, were, in fact, recovered from Accused No. 4. That is an incorrect submission. The Panchnama, Exhibit 27, mentions the name of Accused No. 3. The Articles have been identified and described by the Panch. The shirt is stated to be of a violet colour and the pant a light-blue colour. This corresponds with the articles in the Panchanama, Exhibit 27.

53. The Panch, P.W. 12, has proved the Panchanama, Exhibit 39, and shows the recovery of the shirt, pant and sword at the instance of Accused No. 4. This Panch is not shown to be a relative of any of the witnesses or the deceased. He is stated to be a stooge of the Police, who signs ready-made panchanamas. No incident of he

having signed any other panchanama in any earlier case is shown in his evidence. It is argued that he deposed that the Police told him that the sword and the clothes were to be attached when he reached the Police Station and before the Accused were brought out. He has deposed about the voluntary statement made by Accused No.4. He has also deposed that they were not aware of the place where the articles were kept when they reached that place. He knew that the Accused was not residing in the room where they had gone. The room was 2 to 4 minutes away from the place of residence of the Accused. The Accused had gone to his sister's house. The Panch knew his sister and her residence. The clothes were taken out of a cupboard opened by the Accused. The Panch did not know whether it was locked. All the articles were taken out of the cupboard and the rack separately. A similar incorrect argument that the articles recovered at the instance of Accused No.4 were actually recovered from the other Accused has been made. This Panch has not, however, described the articles in the evidence.

54. It may be mentioned that the recovery is shown to be made and the evidence of each of the four Panchas has not been upturned in the cross-examination.

55. It must, however, be stated that the Accused Nos.1, 2 and 4 were

shown to have been handcuffed at the time when they are supposed to have made their statements for voluntary disclosure of the articles. As per the ruling in the case **Deoraj Deju Suvarna vs. State of Maharashtra (1994) Criminal Law Journal 3602**, the recovery would not be acceptable as voluntarily made.

56. However, this is a case of direct evidence of four eye witnesses whose evidence has been found to be cogent, reliable, truthful and trustworthy. The evidence of each of the witnesses has been corroborated by the medical evidence. Such a case does not even need a further corroboration by recovery of weapons or clothes of any of the Accused. In the aforesaid cases *(supra),* the evidence of the witnesses corroborated only by medical evidence has been taken to be worthy of credibility and enough to sustain conviction.

57. The corroboration by recovery of weapons and clothes would only be required in cases of circumstantial evidence. We, therefore, choose not to place any reliance upon the recovery of any of the weapons or the clothes of any of the Accused. It matters not what they wore and how they kept their clothes. It also matters not which precise weapons each of them used and which precise injuries each of them caused. The more material injury on the head of the Accused corroborates the sword used by him by its semi circular shape as deposed by all the witnesses. The semicircular bone deep

wound, underneath bone fracture, lacerated wounds, could have been caused by the sword and the way Accused No. 1 is shown to have wielded the weapon on the head of the deceased.

58. The evidence of the witnesses corroborated by medical evidence is sufficient to maintain the conviction in this case. The Appeal of all the four Accused is consequently dismissed. The conviction is sustained.

(DR. S. RADHAKRISHNAN, J.)

(SMT. ROSHAN DALVI, J.)